

Other Orders/Judgments

5:23-cv-01934-DCC Wright v.
Warden of Bennettsville FCI

KDW-Inmate

Appendix A

U.S. District Court

District of South Carolina

Notice of Electronic Filing

The following transaction was entered on 9/5/2024 at 3:33 PM EDT and filed on 9/5/2024

Case Name: Wright v. Warden of Bennettsville FCI

Case Number: 5:23-cv-01934-DCC

Filer:

Document Number: 81

Docket Text:

ORDER RULING ON REPORT AND RECOMMENDATION: The Court adopts the recommendation of the Magistrate Judge. Petitioner's motion for summary judgment [43] is DENIED, Respondent's motion for summary judgment [63] is GRANTED, and the motion to compel [76] is FOUND as MOOT. IT IS SO ORDERED.
Signed by Honorable Donald C Coggins, Jr on 9/5/2024. (prou,)

5:23-cv-01934-DCC Notice has been electronically mailed to:

Leesa Washington leesa.washington@usdoj.gov, CaseView.ECF@usdoj.gov, Tamieka.Russell-Brown@usdoj.gov, USA-SC-ECF-Docket-J@usdoj.gov, USA-SC-ECF-FLU@usdoj.gov, USA-SC-ECF-VW-COL@usdoj.gov, jennifer.ludwiczak@usdoj.gov, kathy.kelty@usdoj.gov, lesa.fischer@usdoj.gov

5:23-cv-01934-DCC Notice will not be electronically mailed to:

Ramone Wright
#75703-061
Williamsburg FCI
PO Box 340
Salters, SC 29590

The following document(s) are associated with this transaction:

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[STAMP dcecfStamp_ID=1091130295 [Date=9/5/2024] [FileNumber=12029764-0
] [2189aa86412865c46e46edbabe7a5644b08834464dadc0b1e91132d3248a989fa78
e4a7d2ab6a6433a4d5850658e46e4c07eddde2c49e6ff9886449be148d637]]

(1)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ORANGEBURG DIVISION

Ramone Wright,)	Case No. 5:23-cv-01934-DCC
)	
Petitioner,)	
)	
v.)	ORDER
)	
Warden FCI Bennettsville,)	
)	
Respondent.)	
)	

Petitioner, proceeding pro se, is seeking habeas corpus relief pursuant to 28 U.S.C. § 2241. In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2), (D.S.C.), this matter was referred to United States Magistrate Judge Kaymani D. West for pre-trial proceedings and a Report and Recommendation ("Report"). On November 11, 2023, Petitioner filed a motion for summary judgment.¹ ECF No. 43. On February 20, 2024, Respondent filed a motion to dismiss. ECF No. 63. Petitioner filed a response in opposition. ECF No. 66. On July 30, 2024, the Magistrate Judge issued a Report recommending that Respondent's motion to dismiss be converted to a motion for summary judgment and be granted, that Petitioner's motion for summary judgment be

¹ Petitioner has also filed various additional attachments to his filings, which have been reviewed by the undersigned.

denied, and that the motion to compel be found as moot.² ECF No. 77. Petitioner filed objections. ECF No. 79.

APPLICABLE LAW

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the Court. See *Mathews v. Weber*, 423 U.S. 261 (1976). The Court is charged with making a *de novo* determination of any portion of the Report of the Magistrate Judge to which a specific objection is made. The Court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. See 28 U.S.C. § 636(b). The Court will review the Report only for clear error in the absence of an objection. See *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that "in the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." (citation omitted)).

ANALYSIS

As an initial matter, the Court agrees with the Magistrate Judge that Respondent's motion to dismiss is properly considered as a motion for summary judgment. Petitioner

² Petitioner has also filed various other motions during the pendency of this case. The Magistrate Judge has ruled on all his pretrial motions except a motion to compel filed the day before the Report was issued. ECF No. 76. The Court will address the pending motion to compel in the conclusion of this order.

alleges that his sentence has been miscalculated in that the oral sentence pronounced in open court conflicts with the written sentence signed by the sentencing court. Petitioner contends that his sentence has expired and he is being illegally detained. The Magistrate Judge provides a thorough recitation of the relevant facts and applicable law, which the Court incorporates by reference. The Magistrate Judge determined that the sentence pronounced during Petitioner's sentencing hearing matched the written sentence signed by the sentencing court. Upon de novo review of the record, the Report, and the applicable law, the Court agrees with the recommendation of the Magistrate Judge.

As stated above, Petitioner objects to the Report. Petitioner alleges various misconduct by Respondent during the course of this case. Liberally construed, he contends that certain documents should have been filed under seal, that Respondent has not complied with the scheduling order, that Respondent's motion is improper because it is untimely, and that "Respondent has filed various [different] motion[s] to amend position in current case-captioned which is prejudicial to the opposing party-resulting in bad faith filing . . ." ECF No. 79 (some alterations in original). No scheduling order has been entered in this case, accordingly, any objection that Respondent's motion is untimely or improper is overruled. With respect to whether certain documents should have been filed under seal, Petitioner has not explained why, even assuming they should have been, that failure would entitle him to the relief sought in this action. Finally, the Court has thoroughly reviewed the docket and finds that Respondent filed two motions for extension of time, which were granted by the Magistrate Judge. ECF Nos. 45, 46, 58, 59. Petitioner has not explained how these motions prejudiced him, and the Court is of the strong

(holding that conclusory allegations without more are insufficient to preclude a finding of summary judgment). The record shows that there is no disparity between the oral pronouncement and the written sentence and Petitioner was never sentenced to 82-months imprisonment. Therefore, Petitioner fails to establish that he is being illegally detailed, and summary judgment is appropriate in favor or Respondent.⁴

CONCLUSION

After reviewing the record in this case, the applicable law, and the Report of the Magistrate Judge *de novo*, the Court adopts the recommendation of the Magistrate Judge. Petitioner's motion for summary judgment [43] is **DENIED**, Respondent's motion for summary judgment [63] is **GRANTED**, and the motion to compel [76] is **FOUND as MOOT**.

IT IS SO ORDERED.

s/ Donald C. Coggins, Jr.
United States District Judge

September 5, 2024
Spartanburg, South Carolina

⁴ In the Report, the Magistrate Judge specifically considered Petitioner's motion for summary judgment in making her recommendation. ECF No. 77 at 5–6. The undersigned has also considered Petitioner's motion in making this ruling and finds that Petitioner's motion lacks merit.

Appendix A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Ramone Wright,)	C/A No.: 5:23-1934-DCC-KDW
)	
Petitioner,)	
)	
v.)	REPORT AND RECOMMENDATION
)	
Warden of Bennettsville FCI,)	
)	
Respondent.)	
)	

Ramone Wright ("Petitioner") is a state prisoner who filed this pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. This matter is before the court pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02(B)(2)(c) DSC for a Report and Recommendation on cross motions to dismiss and summary judgment. On November 15, 2023, Petitioner filed a Motion for Summary Judgment. ECF No. 43. On February 20, 2024, Respondent filed a Motion to Dismiss for Lack of Jurisdiction. ECF No. 63. Pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), the court advised Petitioner of the summary judgment and dismissal procedures, and the possible consequences if he failed to respond adequately to Respondent's Motion. ECF No. 64. Petitioner filed a Response in Opposition to Respondent's Motion to Dismiss on March 4, 2024. ECF No. 66.

For the reasons that follow, the undersigned converts Respondent's Motion to Dismiss into a Motion for Summary Judgement. Having carefully considered the parties' submissions and the record in this case, the undersigned recommends that Petitioner's Motion for Summary Judgment be denied, and Respondent's Motion for Summary Judgment be granted.

(7)

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
LEWIS F. POWELL, JR. UNITED STATES COURTHOUSE ANNEX
1100 EAST MAIN STREET, SUITE 501
RICHMOND, VIRGINIA 23219-3517
WWW.CA4.USCOURTS.GOV

NWAMAKA ANOWI
CLERK

TELEPHONE
(804) 916-2700

September 25, 2024

Robin L. Blume, Clerk
U.S. District Court
District of South Carolina
P. O. Box 835
Charleston, SC 29402

RE: Wright v. Warden of Bennettsville FCI
5:23-cv-01934-DCC

Dear Ms. Blume:

The enclosed notice of appeal was received by this court on September 16, 2024.

In accordance with Rule 4(d) of the Federal Rules of Appellate Procedure, the notice has been date stamped and is being forwarded to your court for appropriate disposition. See FRAP 4(d) ("If a notice of appeal in either a civil or a criminal case is mistakenly filed in the court of appeals, the clerk of that court must note on the notice the date when it was received and send it to the district clerk. The notice is then considered filed in the district court on the date so noted.")

If this notice of appeal duplicates a notice already received by the district court, the notice need not be transmitted to this court a second time.

Sincerely,


Mark E. O'Brien
Chief Deputy Clerk

MEO:cad
Enclosure

cc: Ramone Wright (w/ stamped 1st page)
#75703-061
FCI Williamsburg
P.O. Box 340
Salters, SC 29590

(8)

I. Factual and Procedural Background

Petitioner entered a guilty plea to two counts of Hobbs Act robbery and two counts of Brandishing a Firearm During the Commission of a Crime of Violence. *United States v. Wright*, C/A No.: 2:16-cr-00059-MHW (S.D. Ohio Feb. 13, 2017) ("*Wright I*"), ECF No. 49.¹ On February 9, 2017, the district court sentenced Petitioner to 180-months imprisonment. *Id.*, ECF Nos. 46, 47. Petitioner filed a notice of appeal on June 14, 2017, and the Sixth Circuit Court of Appeals dismissed his appeal on September 1, 2017. *Id.*, ECF Nos. 53, 56. On February 14, 2018, Petitioner filed a motion to vacate judgment under 28 U.S.C. § 2255. *Id.*, ECF No. 60. The government moved to dismiss the § 2255 motion on June 13, 2018, and the court dismissed Petitioner's § 2255 motion on December 6, 2019. *Id.*, ECF Nos. 77, 88. Petitioner appealed the denial of his § 2255 motion, which the Sixth Circuit construed as a request for a certificate of appealability. *Id.*, ECF No. 92. On May 18, 2020, the Sixth Circuit issued an order denying the application for certificate of appealability. *Id.*, ECF No. 96. Petitioner filed a petition for writ of certiorari with the United States Supreme Court, which was denied on August 17, 2020. *Id.*, ECF No. 99. Petitioner filed the instant petition on May 8, 2023. ECF No. 1.

II. Federal Habeas Issues²

Petitioner raises the following issues in his Petition for a Writ of Habeas Corpus, quoted verbatim:

Ground One: Oral sentence pronounce 82 months total (see Exhibit A) controls written judgment – which details 180 months total plea agreement is non-void due to prosecutorial misconduct

¹ The court takes judicial notice of Petitioner's prior cases. See *Colonial Penn Ins. Co. v. Coil*, 887 F.2d 1236, 1239 (4th Cir. 1989) ("The most frequent use of judicial notice of ascertainable facts is in noticing the content of court records.") (citation omitted).

² Petitioner's second habeas ground was summarily dismissed by the court on October 5, 2023. ECF No. 32.

Supporting Facts: See Exhibit A, Male Custody Classification Form

ECF No. 1 at 6–7; ECF No. 1-2 at 6. Petitioner seeks to have his sentence vacated. ECF No. 1 at 8.

III. Discussion

A. Respondent's Motion for Summary Judgment

Respondent seeks dismissal of Petitioner's habeas petition arguing Petitioner may not challenge his sentence through a § 2241 petition. ECF No. 63-1 at 8. Respondent cites to Petitioner's sentencing transcript and also argues Petitioner's habeas claim is without merit as the trial record shows that there is no variance between the trial court's oral sentence and the written judgment. *Id.* at 8–9. Because Respondent has submitted materials which go outside the facts alleged in the petition itself, the undersigned considers it appropriate to convert Respondent's motion to dismiss into a motion for summary judgment. *See* Rules 1(b) and 12 of the Rules Governing Section 2254 Cases; Fed R. Civ. P. 12(d).³

In his Response in Opposition, Petitioner argues he was orally sentenced to 82 months and this sentence should be credited over his written judgment. ECF No. 66 at 1–2. In support of his argument, Petitioner references United States Sentencing Guideline 3B1.2 which he claims deals with the grouping together of closely related counts of conviction to determine a defendant's total offense level. *Id.* at 2. Petitioner argues that pursuant to this guideline his oral sentence was 82 months. *Id.* at 2–6. Petitioner contends the only question present in his petition is whether the

³ The undersigned finds Petitioner had an adequate opportunity to present admissible evidence in opposition to the converted motion for summary judgment as the *Roseboro* order issued to Petitioner contained an explanation of the summary judgment procedures. The undersigned further notes Petitioner has filed his own summary judgment motion and Petitioner's Response in opposition addresses the merits of his habeas claim and also presents matters outside of the pleadings.

Federal Bureau of Prisons (“BOP”) correctly calculated Petitioner’s sentence under the BOP’s sentencing manual. *Id.* at 7. Petitioner argues his continued incarceration by the BOP is illegal as his sentence expired on November 22, 2022. ECF No. 66-1.

The Attorney General, through the BOP, is responsible for administering a federal offender’s sentence. 18 U.S.C. § 3621(a) (“A person who has been sentenced to a term of imprisonment ... shall be committed to the custody of the Bureau of Prisons until the expiration of the term imposed”); *United States v. Wilson*, 503 U.S. 329, 335 (1992). Where the BOP errs in the execution of a federal sentence, a remedy is available through a habeas petition filed pursuant to § 2241. A § 2241 petition attacks the manner in which a sentence is executed. 28 U.S.C. § 2241(a), *see also Jones v. Hendrix*, 599 U.S. 465, 475 (2023) (§ 2241 relief is available when prisoner “might wish to argue that he is being detained in a place or manner not authorized by the sentence”).

The undersigned finds Petitioner has failed to establish he is being incarcerated in a manner not authorized by the sentence imposed. Although Petitioner argues the BOP is improperly executing his sentence, the transcript of his February 9, 2017, sentencing hearing shows he was sentenced as follows:

Pursuant to the Sentencing Reform Act of 1984 and 18 United States Code Section 3553(a), it is the sentence of the Court that you be remanded to the Bureau of Prisons for a period of 15 years.

...
And so the sentence will look like this.

Count 1: 37 months; 84 months on Count 2 to run consecutively to Counts 1 and 4 but concurrently to Count 3; 37 months on Count 3 to run concurrently to all other counts; and 59 months on Count 4 to run consecutively to Counts 1 and 2 but concurrently to Count 3. The aggregate total of 160 months, I believe, gets us to 15 years.

MR. BOSLEY: 180 months, Your Honor.

THE COURT: Right. Should be 180 months. 180 months is what it is. Danny, is your math right or is mine wrong?

THE PROBATION OFFICER: Your Honor, if you give me a moment, I'm going to check it again.

THE COURT: 37 plus 84 plus 37 and 59. So we've got to go 37 less than 59.

MR. BOSLEY: 59 months -- 37 and 84 is 121, Your Honor. Then 59 makes it 180. Because two 37s -- the one 37 is concurrent to the other.

THE COURT: You're right. Thank you. The total then, the aggregate total is 180 months, not 160 months, to the Bureau of Prisons.

Wright I, ECF No. 51 at 8-9.

Petitioner's February 15, 2017, Amended Judgment states he was sentenced as follows:

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of Count 1, 37 months imprisonment; Count 2, 84 months imprisonment to run consecutively to Counts 1 and 4, but concurrently to Count 3; Count 3, 37 months Imprisonment to run concurrently to all counts; Count 4, 59 months imprisonment to run consecutively to Counts 1 and 2, but concurrently to Count 3 (180 months total).

Wright I, ECF No. 49-1 at 2.

The record of Petitioner's sentencing establishes Petitioner was never sentenced to 82 months. The record also shows there is no conflict between the oral pronouncement of his sentence and the written judgment as both sentences are the same. Because Petitioner has failed to show the BOP has improperly construed his term of confinement, the undersigned recommends the court grant Respondent's motion for summary judgment, and deny Petitioner's Ground One claim.

B. Petitioner's Motion for Summary Judgment

Petitioner moves summary judgment alleging the Federal Bureau of Prisons ("BOP") improperly computed his sentence which resulted in an illegal sentence. ECF No. 43 at 3. Petitioner argues "[d]ue to the BOP's miscalculation, the oral sentence had therefore been pronounced but

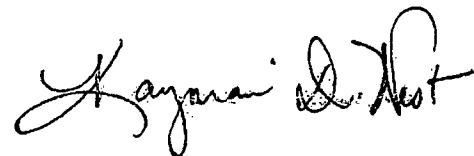
the written sentence was different." *Id.* Petitioner claims he has served the sentence first pronounced and is now serving a consecutive sentence under a written judgment. *Id.* Petitioner argues the BOP's calculation "suffered from a fundamental defect which inherently, resulted in a complete miscarriage of justice." *Id.* Petitioner seeks immediate release. *Id.*

The undersigned considered Petitioner's summary judgment arguments when evaluating Respondent's Motion. Although Petitioner claims he is serving an illegal consecutive sentence under the written judgment, the sentencing transcript makes it clear that Petitioner's oral sentence was also a consecutive sentence. Having found Respondent's Motion to Dismiss/Motion for Summary Judgment should be granted, the undersigned recommends that Petitioners' Motion for Summary Judgment be denied.

IV. Conclusion and Recommendation

Based on the foregoing, the undersigned recommends that Petitioner's Motion for Summary Judgment, ECF No. 43, be **denied**, and Respondent's Motion for Summary Judgment, ECF No. 63, be **granted** and that this case be dismissed. If the court accepts this recommendation, Petitioner's pending Motion to Compel, ECF No. 76, will be moot.

IT IS SO RECOMMENDED.



July 30, 2024
Florence, South Carolina

Kaymani D. West
United States Magistrate Judge

**The parties are directed to note the important information in the attached
"Notice of Right to File Objections to Report and Recommendation."**

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. [I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation. *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee's note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); *see* Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

**Robin L. Blume, Clerk
United States District Court
Post Office Box 2317
Florence, South Carolina 29503**

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).